**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.399 OF 2007.**

Shri Shamrao Balku Patil & Ors. ...Appellants

Versus

Shri Balkrishna Mahadeo Patil
(since deceased) through his
legal representatives
Smt Shalini Balkrishna Patil & Ors. ...Respondents

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Shri S.D.Dharmadhikari for the Appellants.

Shri V.B.Rajure for the Respondent Nos.1(A) to 1(C).

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**CORAM : ABHAY S.OKA, J.**
**DATED : 18th December, 2007.**

**JUDGMENT:**

1. Heard submissions of the learned counsel appearing for the parties. The Second Appeal has been preferred by the original defendant Nos.1 to 4. The original first respondent Balkrishna is the plaintiff. The second respondent is the original defendant No.5.

2. The first respondent filed a suit relating to land bearing Gat No.82 admeasuring 55.6 Are at village Sonurle, Taluka Sahuwadi, District Kolhapur. According to the case of the first respondent, the first appellant (first defendant) and second respondent (fifth defendant) executed an Agreement for Sale dated 21st January, 1987 in favour of the first respondent by which

they agreed to sell the suit land to the first respondent for total consideration of Rs.42,000/-. A sum of Rs.20,000/- was paid by the first respondent as earnest money and balance amount of Rs.22,000/- was to be paid at the time of execution of the conveyance. According to the case of the first respondent, a sum of Rs.10,000/- was received by the first appellant and as the first appellant was having one half share in the suit land, he was entitled to receive balance amount of Rs.11,000/- under the suit agreement. According to the case of the first respondent he was placed in possession of the suit land on 21st January, 1987 by the first appellant and the second respondent. It is alleged that the second respondent executed a Sale Deed in favour of the first respondent in respect of his one half share in the suit land. The first respondent stated in the plaint that on 06th April, 1987 the first appellant sold his share in the suit land by executing a registered document in favour of the second to fourth appellants. According to the case of the first respondent though he was placed in possession of the entire suit land, the second to fourth appellants tried to obstruct his possession on the basis of the aforesaid Sale Deed. The prayer in the suit filed by the first respondent is for grant of a decree of specific performance of Agreement dated 21st January, 1987. The another prayer is that

the Sale Deed dated 06th April, 1987 executed by the first appellant in favour of the second to fourth appellants be set aside. A prayer for perpetual injunction for protecting possession of the first respondent was also made. In the alternative, the first respondent prayed that a decree for possession be passed against the appellants.

3. The suit was contested by the appellants. The second to fourth appellants filed a written statement contending that on 14th July, 1986 the first appellant executed an Agreement for Sale in respect of one half share in the suit land in their favour and had accepted a sum of Rs.22,000/- by way of earnest money from the said appellants. According to the second to fourth appellants on 06th April, 1987 the first appellant executed a Sale Deed in their favour and handed over possession of one half share of the first appellant to them. According to the said appellants the Sale Deed was executed by the first appellant in favour of the second appellant. According to them the second appellant is a bonafide purchaser of the suit land without notice of the suit Agreement. It is submitted that as the suit Agreement was executed subsequent to the Agreement for Sale dated 14th July, 1986 executed by the first appellant in favour of the second to fifth

appellant, the suit Agreement is not binding on the said appellants. It is contended that the second to fourth appellants were in possession of one half share of the first appellant in the suit land.

5. The first appellant filed a separate written statement supporting the case made out by the second to fourth appellants. The first appellant denied execution of the suit Agreement dated 21st January, 1987. The second respondent supported the first respondent.

6. The trial Court dismissed the suit by holding that the first respondent has not proved the suit Agreement. An appeal was preferred by the first respondent. The appellate Court held that execution of the suit Agreement has been proved. The appellate Court also accepted the case made out by the first respondent that he was placed in possession of the entire suit land under the suit Agreement. The Appellate Court held that the second to fourth appellants have failed to prove that they are the bonafide purchasers of the one half share of the first appellant in the suit land. The appellate Court held that the appellants have failed to prove that first appellant executed an Agreement for Sale dated 14th July, 1986 in favour of the second to fourth appellants. The appellate Court, therefore,

proceeded to pass a decree for specific performance and perpetual injunction in favour of the first respondent.

7. The learned counsel appearing for the appellants has made detailed submissions. He pointed out that the execution of the suit Agreement was not at all proved by the first respondent. He submitted that the appellate Court was unnecessarily impressed by the fact that the first appellant denied his signature on the vakalatnama of his advocate filed in the trial Court. He submitted that the case made out by the first respondent as regards execution of the suit agreement is highly suspicious. He invited my attention to the findings recorded by the trial Court. He pointed out that perusal of the Sale Deed dated 09th March, 1987 allegedly executed by the second respondent in respect of his one half share in the suit land in favour of the first respondent shows that the sale was for consideration of Rs.7,000/-. He submitted that in the alleged suit Agreement the total consideration was shown as Rs.42,000/- and therefore it is obvious that the Sale Deed executed by the second respondent in favour of the first respondent for the consideration of Rs.7,000/- is not on the basis of the alleged suit Agreement. He submitted that the execution of the Agreement dated 14th July, 1986 by the first appellant in favour of the

second to fourth appellants was duly proved and therefore, there was an Agreement for Sale in favour of the second to fourth appellants even prior to the date of execution of the alleged suit Agreement. He, therefore, submitted that the second to fourth appellants are not bound by the alleged suit Agreement. He submitted that the said appellants are bonafide purchasers of the share of the first appellant without notice of the alleged suit Agreement. He further submitted that the first respondent was holding a Sale Deed in respect of the undivided one half share of the second respondent and therefore the first respondent cannot claim to be in possession. He, therefore, submitted that the appellate Court has committed an error by interfering with the decree passed by the trial Court. The learned counsel appearing for the first respondent supported the impugned judgment and decree by pointing out various findings recorded therein.

8. I have given careful consideration to the submissions made by the counsel for the appellants. I have also perused the pleadings and notes of evidence.

9. The perusal of the judgment of the appellate Court shows that the said Court has considered the entire oral and documentary evidence on record. The

original plaintiff (first respondent) deposed about the execution of the suit Agreement as well as execution of Sale Deed dated 09th March, 1987 in his favour by the second respondent. The original plaintiff also deposed regarding his readiness and willingness to pay balance consideration to the first appellant. The appellate Court has referred to the cross-examination of the original plaintiff. The appellate Court referred to the suggestion given in the cross-examination of the original plaintiff that the suit Agreement at Exhibit 87 was prepared by misusing a stamp paper purchased by the second respondent on 21st January, 1987 for some other purpose. The original plaintiff also examined one Sarjerao who was attesting witness to the suit Agreement. The original plaintiff also examined one Pandurang who was the scribe of the suit Agreement. The said Pandurang was also a witness to the execution of the suit Agreement. The original plaintiff deposed to the fact that on the basis of the suit Agreement his name was entered in the record of rights.

10. On the other hand the first appellant entered the witness box and denied the execution of the suit Agreement. He stated that he was unable to read and write though he was in a position to make signature. He stated that he has taken education in the night school.

He specifically denied his signature on the suit Agreement at Exhibit 87.

11. The first appellant was shown his own written statement at Exhibit 26 in the cross-examination. He clearly denied his signature on the said written statement. In the last part of his cross-examination, the first appellant was again confronted with the suit Agreement dated Exhibit 87. The learned trial Judge has recorded that after showing the document at Exhibit 87 the first appellant was asked whether the said document bears his signature. The learned trial Judge recorded that the first appellant declined to answer the said question. The first appellant further stated that he was unable to identify his own signature. At that stage the witness was confronted by showing the vakalatnama signed by him in favour of his advocate. The first appellant, however, identified his signature. At that stage again he was showed his written statement. At that stage the first appellant admitted his signature on the written statement. The first appellant was shown document at Exhibit 71. However, he declined to state whether the signature on the said document was his signature. The aforesaid answers given by the first appellant have been considered by the appellate Court. This conduct of the first appellant has been duly

considered by the appellate Court. In view of the said conduct, the appellate Court did not accept the denial of execution of the suit Agreement by the first appellant and accepted the case made out by the original plaintiff (first respondent) and his witnesses as regards execution of the suit Agreement by the first appellant.

12. The appellate Court also considered the inconsistent stand taken by the first appellant regarding consideration received by him at the time of execution of the alleged Agreement dated 14th JUly, 1986 1987 executed by him in favour of the second to fourth appellants. The appellate Court also observed that the original Sale Deed executed by the first appellant in favour of the second appellant has not be produced by the said appellants.

13. The appellate Court found that the appellant Nos.2 to 4 who were claiming to be the bonafide purchasers without notice of the suit Agreement did not enter the witness box. Therefore, the appellate Court has drawn adverse inference against them. The appellate Court found that in the Sale Deed relied upon the by said appellants there was no reference to the execution of alleged Agreement dated 14th July, 1986 by the first

appellant. Therefore, the appellate Court came to the conclusion that the alleged Agreement dated 06th April, 1987 was subsequently prepared by the first and second appellants for purpose of defending the suit filed by the first respondent. The appellant Nos.2 to 4 did not come before the Court to depose about execution of the alleged Agreement dated 14th July, 1986.

14. The appellate Court has referred to mutation entry 177 which showed that an order was passed by the Tahsildar for entering the name of the first respondent on the basis of the suit Agreement. The appellate Court found that entry of name of the first respondent was made on 05th April, 1987 and the second to fourth appellants purported to obtain a Sale Deed from the first appellant on 06th April, 1987. Considering the mutation entry and considering the fact that second to fourth appellants failed to enter the witness box, the appellate Court has recorded a finding of fact that the said appellants have not proved that they were bonafide purchasers of the suit land without the knowledge of the suit Agreement.

15. I find that aforesaid findings of fact recorded by the appellate Court are consistent with the oral evidence on record.

16. The appellate Court has accepted the case made out by the first respondent and his witnesses as regards execution of the suit Agreement by the first appellant and payment of earnest money by the first respondent. Therefore, the fact that a different amount of consideration is mentioned in the Sale Deed executed by the second respondent in favour of the first respondent will not help the case of the appellants. In the suit Agreement there is a recital regarding handing over of possession of the suit land in favour of the first respondent.

17. Considering the aforesaid aspects, no substantial question of law arises. Second Appeal is accordingly dismissed with no orders as to costs.

**JUDGE**